



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

BCS/153420

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 12, 2013, under Wis. Stat. § 49.45(5)(a), to review a decision by the Ozaukee County Department of Social Services in regard to Medical Assistance, a hearing was held on December 12, 2013, at Madison, Wisconsin.

The issue for determination is whether the Petitioner's appeal is timely and, if so, whether the agency properly closed the Petitioner's BC+ case effective May 1, 2012.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pahoua Vang

Ozaukee County Department of Social Services  
121 W. Main Street  
PO Box 994  
Port Washington, WI 53074-0994

**ADMINISTRATIVE LAW JUDGE:**

Debra Bursinger  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is currently a resident of Florida. He was a resident of Wisconsin at times pertinent to this case, specifically from April, 2012 – July 31, 2012. On July 31, 2012, he reported to the agency that he was no longer a resident of Wisconsin.

2. On April 12, 2012, the agency updated the Petitioner's case. Petitioner's son had turned 19 years of age, which changed the Petitioner's household size to 2.
3. On April 13, 2012, the agency issued a Notice of Decision to the Petitioner at [REDACTED] [REDACTED] informing him that effective May 1, 2012, he and his son would no longer be eligible for BC+ benefits due to income over the program limit. It further informed the Petitioner that his daughter remained eligible for BC+ with a \$10/month premium effective May 1, 2012. The notice further informed the Petitioner of the right to appeal the agency's determination by filing an appeal by June 18, 2012.
4. On June 3, 2012, the Petitioner had medical services performed. In July, 2013, he was informed by the provider that payment for the services was denied by BC+.
5. On July 9, 2012, the agency issued a Notice of Decision to the Petitioner at [REDACTED] [REDACTED] informing him that effective August 1, 2012, he and his son would no longer be eligible for BC+ benefits due to income over the program limit. It further informed the Petitioner that his daughter remained eligible for BC+ with a \$10/month premium effective August 1, 2012. The notice further informed the Petitioner of the right to appeal the agency's determination by filing an appeal by September 17, 2012.
6. On November 12, 2013, the Petitioner filed an appeal with the Division of Hearings and Appeals.

### **DISCUSSION**

A hearing officer can only rule on the merits of a case if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by a county agency concerning MA, including BC+, must be filed within 45 days of the date of the action. Wis. Stat. § 49.45(5). A negative action can be the denial of an application or the reduction or termination of an ongoing case.

In this case, the Petitioner testified that he did not receive the agency's April 13, 2012 Notice of Decision informing him that his BC+ benefits would end effective May 1, 2012. He testified that it was sent to the correct address and that he was not having mail delivery problems. The Petitioner testified that he did receive the agency's July 9, 2012 notice informing him that he was not enrolled in BC+ as of August, 2012. The appeal deadline based on that action was September 17, 2012.

The Petitioner also testified that, because he did not receive the April 13, 2012 notice, he had medical services performed in June, 2013. He testified that he would not have had the services performed if he was aware that his benefits ended effective May 1, 2012. He also testified that BC+ covered medical services from May, 2012. The agency presented evidence to indicate that though the agency was billed for services in May, 2012, the services were not paid by BC+.

The Petitioner did not present sufficient evidence to rebut the agency's evidence that the Notice of Decision dated April 13, 2012 was properly issued. Even if the Petitioner did not receive that notice, he did receive the notice of July 9, 2012 with an appeal deadline of September 17, 2012. The Petitioner's appeal was filed more than one year after the deadline. Therefore, I do not have jurisdiction to rule on the merits of this case.

### **CONCLUSIONS OF LAW**

The Petitioner's appeal was not timely.

**THEREFORE, it is**

**ORDERED**

That the petition for appeal is dismissed.

**REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

**APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

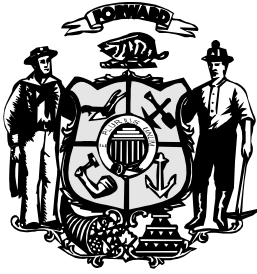
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 28th day of January, 2014

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\sDebra Bursinger  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 28, 2014.

Ozaukee County Department of Social Services  
Division of Health Care Access and Accountability